

IN THE COURT OF COMMON PLEAS

HOLMES COUNTY, OHIO

FILED

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STATE OF OHIO, ex rel., :
WILLIAM J. BROWN :
ATTORNEY GENERAL OF OHIO, :

Plaintiffs, :

vs. :

HOLMES BY-PRODUCTS COMPANY, INC. :

AND :

ABE L. MILLER, as President of :
Holmes By-Products :
Company, Inc., :

Defendants :

DORCAS L. MILLER
CLERK OF COURT
HOLMES COUNTY, OHIO

Case No. 80-C-216

JOURNAL ENTRY

This matter has come forward on Verbal Motion of the defendant Holmes By-Products Company asking for stay of the injunction prohibiting the use of a coal fired boiler by defendant as per court order dated July 27, 1981.

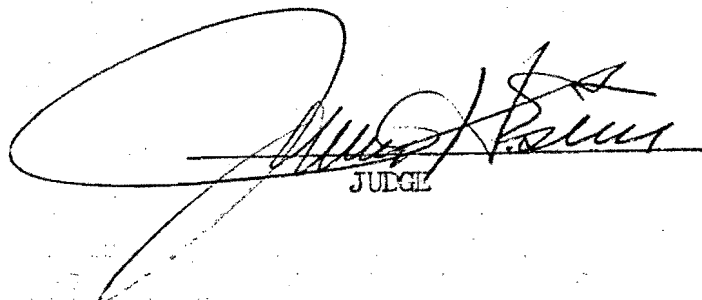
The court finds from the evidence presented that the Ohio Attorney General and the Ohio E.P.A. have given consent to the operation of the coal boiler under certain conditions outlined in a letter to the Court dated August 4, 1982 and filed with Court August 9, 1982 (copy of said letter is attached hereto and made a part thereof by reference thereto and marked Exhibit A.) The Court also finds that condition (1) has been complied with by the defendant. (Attached receipt of Federal Express delivery receipt which is made a part of this motion by reference to and marked Exhibit B.)

The court hereby orders that the injunction prohibiting the operation of the coal fired boiler is hereby stayed per the conditions contained in the aforementioned letter as if rewritten herein.

The court further orders that the event of failure of defendant to comply with any of the conditions set down by the Ohio E.P.A. governing the operation of said boiler the stay of the injunction of July 27, 1981 will be nullified and the injunction in force and effect.

Cost of this proceeding to defendant.

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JUDGE

STATE OF OHIO
WILLIAM J. BROWN

per phone 8/14/82.
By: Stephen Willey

FRANCIS C. SMITH, Atty
for Defendant

State of Ohio
Office of the Attorney General



William J. Brown
Attorney General

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DORCAS L. MILLER
CLERK OF COURTS
August 4, 1982
HOLMES COUNTY OHIO

Bruce J. Rakay
First Assistant Attorney General
Alex Shumate
Executive Assistant Attorney General
James R. Rishel
Chief Counsel
Joel S. Taylor
General Counsel

Jack Wilmer, Esquire
Vorys, Sater, Seymour & Pease
52 East Gay Street
Columbus, Ohio 43216

RE: State of Ohio, ex rel. Brown v. Holmes By-Products
Company

#12272

Dear Jack:

On July 27, 1981, Judge Estill executed a Judgment Entry in the above-captioned action, agreed to by Holmes By-Products Company, which imposed a penalty of five thousand dollars upon the company. The Judgment Entry also forbade operation of the coal-fired boiler after October 30, 1981, unless the company performed certain tasks which were not performed. To this date the penalty has not been paid, and the boiler has been unlawfully operated on numerous occasions. Mr. Miller has now requested this office to agree to operation of the boiler even though such operation would be in violation of the Judgment Entry, and even though such operation would occur without the company having obtained a permit to operate the source from Ohio EPA.

We have discussed the matter with Ohio EPA, and we have reluctantly decided to agree to operation of the boiler provided, that each and every condition set forth below is strictly complied with by the company. Failure to so comply will render our agreement a nullity, and we will consider asking the court for sanctions for operation of the boiler in violation of law and the Judgment Entry.

Jack Wilmer, Esquire
August 4, 1982
Page 2

The conditions for our refraining from seeking sanctions for operation of the boiler are as follows:

1. The five thousand dollar judgment shall be paid in full no later than August 15, 1982 by forwarding a check to me made out to Treasurer, State of Ohio. The check will be deposited in the General Revenue Fund.
2. Operation of the boiler shall not occur prior to payment of the judgment.
3. Except as provided in paragraph 6 below, the boiler shall not be operated using coal having an ash content of greater than 7%.
4. A certified analysis of the ash content of each shipment of coal shall be provided to Glen Greenwood of Ohio EPA's Southeast District Office within three days of receipt of the shipment.
5. All necessary modifications to the boiler and associated equipment, and installation of all emission control equipment, must be completed by August 31, 1982.
6. An emissions test ("stack test") must be conducted by September 15, 1982, in accordance with OAC 3745-17-03. During the test, the company must use coal of the quality and ash content that the company wishes to demonstrate can be used in compliance with applicable emission standards.
7. The results of the stack test must be submitted to Mr. Greenwood by October 15, 1982.
8. If the test demonstrates compliance with applicable emission standards, the company shall submit to Mr. Greenwood a complete application for a permit to operate the boiler by October 15, 1982. If the test shows non-compliance, the boiler will be shut down immediately upon receipt by the company of the test results.

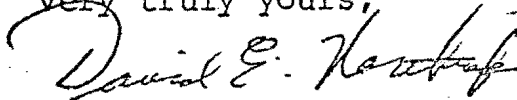
Jack Wilmer, Esquire
August 4, 1982
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9. The company must pay the permit fee within fifteen days of receipt of the permit to operate.

Let me again emphasize that if any of the above conditions are not strictly observed by the company, this office is not bound by the above agreement, and will consider seeking sanctions for unlawful operation of the boiler.

Please advise me of your intentions with regard to the above.

Very truly yours,



For Steven J. Willey
Assistant Attorney General
(614) 466-2766

SJW:cw

cc: Judge Estill

Exhibit B
POST OFFICE ADDRESS

Holmes BY-Product
 Rendering Plant
 RLS
 Millersburg, OH 44654

ORIGIN:
 Initials of Receiving Clerk: **RDH**
 P.O. ZIP Code: **44654**
 Date In: **8-12-82** Time In: **3:00 P**
 Return Receipt Service
 To Whom & Date Del.
 To Whom, Date & Address of Del.
 Weight: **1** Lbs Postage & Fees: **\$ 9.135**

28226891

SERVICE GUARANTEE:
 Delivery on days and times specified on designated USPS mail is guaranteed by the USPS. Delivery on days and times specified on designated USPS mail is not guaranteed. Delivery on days and times specified on designated USPS mail is not guaranteed. Delivery on days and times specified on designated USPS mail is not guaranteed.

INSURANCE COVERAGE:
 The USPS is not responsible for loss or damage to mail in transit. The USPS is not responsible for loss or damage to mail in transit. The USPS is not responsible for loss or damage to mail in transit.

Customer Number, if any:
 State of Ohio A HyGene
 State Office Tower
 30 E. Broad St.
 Columbus, OH 43215
 (W. Steven J. Willey)
 U.S.G.P.O. 1981-348 724

EXPRESS MAIL SERVICE
Customer Receipt

POST OFFICE ADDRESS

HOLMES BY PRODUCTS COMPANY

MEAT MEAL & FEATHER MEAL

MILLERSBURG OHIO 44664

Exhibit B

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412

Treasurer of the State of Ohio
Three Thousand and 00/100



BERLIN OFFICE
HILLBUCK SAVINGS BANK CO.
BERLIN OHIO

Insurance for burning coal

Chas. L. Miller

PAID BY COLLECTOR 0530 0239000 3181